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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 United States of America,
10
11 Plaintiff,

12 v.

13 Iris Rodriguez

14 Defendant.

No. CR-17-01301-TUC-JAS (BGM)

REPORT AND RECOMMENDATION

15 Currently pending before the Court is Defendant Iris Rodriguez's Motion to
16 Suppress Evidence (Doc. 29). The Government has filed its Response (Doc. 37), and no
17 reply was filed.

18 Defendant is charged with one count of knowingly and intentionally combining,
19 conspiring, confederating and agreeing together and with other persons known and
20 unknown to possess with intent to distribute five (5) grams or more of methamphetamine,
21 or fifty (50) grams or more of a mixture or substance containing a detectable amount of
22 methamphetamine (approximately 140 grams of methamphetamine), a Schedule II
23 controlled substance, in violation of Title 21, United States Code, Sections 841(a)(1) and
24 841(b)(1)(B)(viii), and with one count of knowingly and intentionally possessing with
25 intent to distribute five (5) grams or more of methamphetamine, or fifty (50) grams or
26 more of a mixture or substance containing a detectable amount of methamphetamine
27 (approximately 140 grams of methamphetamine), a Schedule II controlled substance; in
28 violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(viii). Indictment (Doc. 8).

Pursuant to LRCrim. 5.1, this matter came before Magistrate Judge Macdonald for

1 an evidentiary hearing and a report and recommendation. An evidentiary hearing was
2 held before Magistrate Judge Macdonald on May 1, 2018. Minute Entry 5/1/2018 (Doc.
3 38). On May 8, 2018, the Court received the final transcript, and the motion is now ripe
4 for adjudication. The Magistrate Judge recommends that the District Court, after its
5 independent review, deny Defendant's motion.

6 7 **I. FACTUAL BACKGROUND**

8 ***A. The I-19 Checkpoint***

9 Border Patrol Agent Vanessa Salcedo described the I-19 Border Patrol Checkpoint
10 in Amado, Arizona. Hr'g Tr. 5/1/2018 (Doc. 42) at 7:7–11:15. Agent Salcedo has
11 worked for Border Patrol for three (3) years, and has worked at the I-19 checkpoint in
12 Amado, Arizona for two (2) years. *Id.* at 6:24–7:1. Agent Salcedo testified that she is
13 stationed at the checkpoint full time, approximately five (5) days per week, or fifty (50)
14 hours per week. *Id.* at 7:2–6. Agent Salcedo explained the general procedure at the I-19
15 checkpoint, where vehicles enter the primary inspection area and are initially met by a
16 primary inspection agent. *Id.* at 8:1–9:1. Agent Salcedo described this initial contact as
17 an immigration inspection, in which the agent conducts a small investigation to determine
18 the citizenship or immigration status of the driver or occupant(s). *Id.* at 8:18–9:9, 38:5–9.
19 Agent Salcedo testified that there was not a specific script, but that she will sometimes
20 ask for identification. Hr'g Tr. 5/1/2018 (Doc. 42) at 9:10–14. Agent Salcedo further
21 testified that there is not a requirement for a specific form of identification, and that the
22 immigration inspection concludes “when the agent is satisfied with the citizenship status
23 of the person they're encountering[.]” *Id.* at 9:15–10:8. Agent Salcedo explained that,
24 for her, this means that she has performed her due diligence, including running a records
25 check, and if after looking at an individual's identification, she believes that the person is
26 being truthful. *Id.* at 10:3–8.

27 Agent Salcedo also described the general procedure for shuttle buses or vans
28 entering the immigration checkpoint. *Id.* at 10:9–13:19. Agent Salcedo testified that all

1 shuttle buses and vans are sent to the secondary inspection area. *Id.* at 10:9–19, 11:6–10.
2 Agent Salcedo explained that this procedure is to provide the agents more time, given the
3 increased number of occupants in those vehicles. Hr’g Tr. 5/1/2018 (Doc. 42) at 10:20–
4 24. Agent Salcedo estimated that fifty (50) shuttle vehicles travel through the checkpoint
5 each day. *Id.* 10:25–11:4, 11:11–15. Agent Salcedo further testified that subsequent to
6 an immigration check, she has arrested individuals for illegal entry and/or attempting to
7 smuggle narcotics in the United States on their person. *Id.* at 11:16–12:10. Agent
8 Salcedo testified that when attempting to assess whether someone might be carrying
9 narcotics on their person or entering illegally, she looks for really baggy clothing, and
10 someone who is shying away from her, avoiding eye contact, or moving away. *Id.* at
11 12:11–19, 40:1–5, 45:8–15. Conversely, Agent Salcedo also testified that on the opposite
12 end of the spectrum, someone who is super happy, nervous, very loud, talking fast, and
13 “all in [her] face” is also suspicious. *Id.* at 12:11–19, 45:16–46:1.

14 ***B. The Stop***

15 On July 28, 2017, at approximately 5:25 p.m., Agent Salcedo was stationed at the
16 I-19 checkpoint, working in the secondary inspection area. Hr’g Tr. 5/1/2018 (Doc. 42)
17 at 13:24–14:19. Agent Salcedo testified that a Sonoran shuttle entered the secondary
18 inspection area. *Id.* at 14:23–15:1. Agent Salcedo did not remember exactly how many
19 agents were in secondary at that time; however, she remembered at least herself and one
20 other agent. *Id.* at 15:2–6. Agent Salcedo further testified that she recalled less than
21 twelve (12) shuttle passengers. *Id.* at 15:7–13. Agent Salcedo also testified that she was
22 positioned next to the shuttle, in front of its doors. *Id.* at 15:25–16:8. Agent Salcedo
23 stated that she likes to be in the front in order to observe who is exiting the shuttle, and
24 for officer safety. Hr’g Tr. 5/1/2018 (Doc. 42) at 16:12–16.

25 Agent Salcedo testified that a female passenger drew her attention when she exited
26 the shuttle, made eye contact, and then “quickly proceeded to move away[.]” *Id.* at
27 16:17–21. Agent Salcedo testified that she found this behavior suspicious, noting that it
28 was one of the indicators that suggests a person may be involved in criminal activity. *Id.*

1 at 16:22–17:2, 53:8-19. Agent Salcedo also noted that an individual making eye contact
2 and then walking away from her is very unusual. *Id.* at 52:14–25. Agent Salcedo further
3 testified that she initiated contact with the woman, and identified her as Defendant Iris
4 Rodriguez. *Id.* at 17:3–16.

5 Agent Salcedo testified that she asked Ms. Rodriguez if she was a United States
6 citizen. Hr’g Tr. 5/1/2018 (Doc. 42) at 17:18–22. Ms. Rodriguez responded
7 affirmatively, providing Agent Salcedo an Arizona driver’s license; however, Agent
8 Salcedo found that the individual pictured on the driver’s license did not appear to be Ms.
9 Rodriguez. *Id.* at 17:13–18:5, 40:24–41:14. Agent Salcedo further testified that she
10 proceeded to ask Ms. Rodriguez for additional identification. *Id.* at 18:6–7. Ms.
11 Rodriguez then provided Agent Salcedo a United States passport card, but again Agent
12 Salcedo found that the individual pictured did not appear to be Ms. Rodriguez. *Id.* at
13 18:8–20:15, 41:19–42:4. Agent Salcedo also testified that aside from the identification
14 pictures not appearing to be Ms. Rodriguez, the pictures did not look like one another
15 either. *Id.*; see also Govt.’s Exhs. “4” & “5.” Agent Salcedo testified that this
16 discrepancy led her to believe that Ms. Rodriguez was not a United States citizen, and
17 further investigation was required. Hr’g Tr. 5/1/2018 (Doc. 42) at 20:16–20. Agent
18 Salcedo denied that Ms. Rodriguez showed her any other identification. *Id.* at 43:3–20.
19 Agent Salcedo testified that in light of the apparent discrepancy, she ran a records
20 check—meaning that she called her dispatch with Defendant’s name and date of birth for
21 a search for any criminal history, citizenship, and whether there are any reports of official
22 identification having been stolen. *Id.* at 20:21–21:16, 54:6–22.

23 While Agent Salcedo was waiting for the results of the records check, she
24 continued to question Defendant. *Id.* at 21:23–25. Agent Salcedo testified that she asked
25 Ms. Rodriguez where she was from, and where she was coming from. *Id.* at 22:1–3. Ms.
26 Rodriguez stated that she was from Tucson, and was coming from Nogales, Arizona.
27 Hr’g Tr. 5/1/2018 (Doc. 42) at 22:4–6. Agent Salcedo further testified that Ms.
28 Rodriguez stated that her nineteen (19) year old daughter was living with a roommate in

1 Nogales, and that she taken her school shopping. *Id.* at 22:7–13. Agent Salcedo testified
2 that she found Ms. Rodriguez’s answers odd, because she thought it was odd that Ms.
3 Rodriguez was still school shopping for a daughter who had moved out on her own. *Id.*
4 at 22:23–23:4.

5 At some point during Agent Salcedo’s questioning, Ms. Rodriguez moved away
6 from the agent to sit down. *Id.* at 23:13–19. Agent Salcedo testified that Ms.
7 Rodriguez’s demeanor seemed a little nervous, and that she appeared excited, very
8 happy, talking loud and fast, and mixing up her words.¹ *Id.* at 23:20–24:5, 51:25–52:10.
9 Agent Salcedo further testified that based on Ms. Rodriguez’s behavior and her training
10 and experience, she suspected that Ms. Rodriguez was involved in criminal activity. *Id.*
11 at 24:4–15. Specifically, Agent Salcedo believed that Ms. Rodriguez was a body carrier.
12 Hr’g Tr. 5/1/2018 (Doc. 42) at 24:4–15. Based on her suspicions, Agent Salcedo asked
13 Ms. Rodriguez if she would consent to a search of her person. *Id.* at 24:16–19, 47:15–19.
14 Agent Salcedo testified that Ms. Rodriguez verbally consented to the search. *Id.* at
15 24:20–24, 47:23–48:1, 72:12–20. Agent Salcedo further testified that her normal practice
16 is to obtain verbal consent prior to a search. *Id.* at 24:25–25:6. Agent Salcedo estimated
17 that her encounter with Ms. Rodriguez up to this point had lasted approximately forty-
18 five (45) seconds. *Id.* at 26:14–20, 43:21–23, 47:15–19.

19 Upon Ms. Rodriguez’s consent to be searched, they walked to a white shed where
20 Agent Salcido conducted all pat-downs and searches of females. Hr’g Tr. 5/1/2018 (Doc.
21 42) at 26:23–27:8, 72:21–73:1. Agent Salcedo testified that although she was armed, her
22 weapon remained holstered, and at no time did she place her hand on her firearm or
23 otherwise motion toward it, nor did she restrain Ms. Rodriguez, place her under arrest, or
24 threaten her. *Id.* at 25:11–26:13. Agent Salcedo testified that she and Ms. Rodriguez
25 were the only people in the shed, and Agent Meadz was standing just outside the door.
26 *Id.* at 73:7–10, 74:2–22. Prior to performing the pat down search, Agent Salcedo asked
27

28 ¹ Agent Salcedo explained that “mixing up her words” meant Ms. Rodriguez jumbled the
word placement of her sentences. Hr’g Tr. 5/1/2018 (Doc. 42) at 23:24–24:5.

1 Ms. Rodriguez if she had any weapons or drugs on her person. *Id.* at 30:6–18. Ms.
2 Rodriguez responded that she was not in possession of any weapons or drugs. *Id.* at
3 30:19–21. Agent Salcedo informed Ms. Rodriguez that she was going to begin the
4 search, and Ms. Rodriguez stated “okay.” Hr’g Tr. 5/1/2018 (Doc. 42) at 30:22–31:3.

5 Agent Salcedo testified that she performed one complete pat-down of Ms.
6 Rodriguez in the manner in which she had been trained. *Id.* at 31:8–22, 54:12–22, 74:23–
7 25. Agent Salcedo estimated that the search took approximately fifteen (15) seconds. *Id.*
8 at 75:1–2. Agent Salcedo further testified that at the outset of the search, Ms. Rodriguez
9 continued to exhibit a good mood. *Id.* at 31:4–7. Agent Salcedo testified that as she
10 conducted the pat-down search, she felt a hard, abnormal bulge under Ms. Rodriguez’s
11 left breast area. *Id.* at 31:23–32:5, 75:3–23. Agent Salcedo asked Ms. Rodriguez to “pull
12 out what was in her bra.” Hr’g Tr. 5/1/2018 (Doc. 42) at 32:6–7. Ms. Rodriguez stated
13 that it was just the wire to her bra; however, Agent Salcedo did not believe her, because
14 the object did not feel like an underwire. *Id.* at 32:8–13, 77:13–18. Agent Salcedo also
15 testified that she has apprehended approximately twenty (20) other body carriers, and the
16 hard object felt similar to those discovered on other individuals. *Id.* at 75:24–76:21.
17 Agent Salcedo testified that at this point, Ms. Rodriguez was beginning to be upset—she
18 began sweating, shaking, crying, and was becoming hysterical. *Id.* at 32:14–17, 76:22–1.
19 Agent Salcedo further testified that she asked Ms. Rodriguez to pull the item out of her
20 bra a minimum of three (3) times. *Id.* at 32:18–25, 48:19–25, 77:2–5. When Ms.
21 Rodriguez became agitated, and was non-compliant with Agent Salcedo’s directions,
22 Agent Mead came to the shed doorway, and instructed Ms. Salcedo to comply with Agent
23 Salcedo’s orders, or else he would use his taser. *Id.* at 77:19–78:5. Agent Salcedo also
24 testified that eventually, Ms. Rodriguez did remove the item, and described it as a black,
25 cylindrical, bolt-shaped bundle, wrapped in black electrical tape, and approximately five
26 (5) or six (6) inches in length and two (2) inches wide. Hr’g Tr. 5/1/2018 (Doc. 42) at
27 33:1–23. Agent Salcedo testified that by this time Ms. Rodriguez was hysterical, crying,
28 and visibly upset. *Id.* at 33:24–34:3. Agent Salcedo further testified that once the bundle

1 was removed, she took it, placed it under her left foot, and placed Ms. Rodriguez under
2 arrest. *Id.* at 37:11–15. Agent Salcedo estimated that she and Ms. Rodriguez were in the
3 shed for approximately two (2) minutes. *Id.* at 78:11–17. Agent Salcedo also testified
4 that at no time did Ms. Rodriguez revoke her consent to be searched. *Id.* at 37:16–19,
5 78:18–20. Agent Salcedo was unaware of any health issues that Ms. Rodriguez may have
6 had. Hr’g Tr. 5/1/2018 (Doc. 42) at 79:4–24.

7 Agent Salcedo further testified that once the bundle was retrieved, agents cut open
8 a section of the bundle to obtain a sample of the substance. *Id.* at 34:22–35:24. After a
9 sample was obtained, the substance was tested with a narcotics identifying kit. *Id.* at
10 35:11–36:21. Agent Salcedo testified that upon testing, the substance tested positive for
11 characteristics of methamphetamine. *Id.* Agent Salcedo further testified that the bundle
12 weighed approximately 140 grams. *Id.* at 37:4–10.

13 ***C. Defendant Iris Rodriguez’s Testimony***

14 Defendant Iris Rodriguez is a thirty-five (35) year old female, who has lived in
15 Arizona since she was eleven (11) years old. Hr’g Tr. 5/1/2018 (Doc. 42) at 57:3–14.
16 Ms. Rodriguez is a United States citizen. *Id.* Ms. Rodriguez testified that at the
17 checkpoint the shuttle pulled in, and the passengers were instructed by Agent Salcedo to
18 exit the vehicle and have their identifications present. *Id.* at 58:20–59:12. Ms. Rodriguez
19 further testified that the passengers were instructed to go sit down on the bench under the
20 tent. *Id.*

21 Ms. Rodriguez testified that she and Agent Salcedo made eye contact when Agent
22 Salcedo stepped onto the bus, and instructed the passengers to exit the vehicle. *Id.* at
23 59:19–22. Ms. Rodriguez further testified that once she exited the shuttle, she began
24 following the rest of the passengers toward the bench under the tent. Hr’g Tr. 5/1/2018
25 (Doc. 42) at 59:23–60:4. Ms. Rodriguez stated that Agent Salcedo asked her for
26 identification, and Ms. Rodriguez walked toward Agent Salcedo providing a driver’s
27 license. *Id.* at 60:2–12, 66:14–67:4, 70:20–24. Ms. Rodriguez testified that Agent
28 Salcedo asked if she was a United States citizen, and Ms. Rodriguez responded

1 affirmatively. *Id.* Ms. Rodriguez further testified that Agent Salcedo stated that Ms.
2 Rodriguez did not look anything like the driver's license picture. *Id.* at 60:13–16, 66:14–
3 67:4. Ms. Rodriguez gave Agent Salcedo her passport, and testified that Agent Salcedo
4 stated that Ms. Rodriguez “still [did not] look like the person in the picture.” *Id.* at
5 60:17–21, 70:20–24. Ms. Rodriguez testified that she began taking out her social security
6 card, bus card, and Arizona medical card, and began showing them to Agent Salcedo.
7 Hr’g Tr. 5/1/2018 (Doc. 42) at 60:17–61:9, 70:25–71:6. Ms. Rodriguez further testified
8 that she got upset when Agent Salcedo told her that she did not look like the photographs
9 on her identification. *Id.* at 63:4–9, 67:21–68:1. Ms. Rodriguez stated that she was not
10 feeling well at the time of the stop. *Id.* at 62:12–63:3.

11 Ms. Rodriguez also testified that Agent Salcedo asked if she could speak to her,
12 leading Ms. Rodriguez to the shed, but did not ask for consent to search. *Id.* at 63:23–
13 64:12, 68:5–69:12. Ms. Rodriguez testified that there was no preliminary discussion
14 prior to the search, and that Agent Salcedo's partner, a male agent, followed them to the
15 shed and threatened to use his taser on Ms. Rodriguez if she did not cooperate. *Id.* at
16 64:13–65:1. Ms. Rodriguez asserted that she did not consent to the search, and that
17 Agent Salcedo told her to put her hands behind her head and spread her legs
18 approximately three (3) times. Hr’g Tr. 5/1/2018 (Doc. 42) at 69:15–18. Ms. Rodriguez
19 further testified that Agent Salcedo patted her down continuously “four or five times.”
20 *Id.* at 65:3–13, 69:19–21. Ms. Rodriguez estimated that the search took ten (10) minutes.
21 *Id.* at 65:14–20, 69:19–21. Ms. Rodriguez testified that Agent Salcedo repeatedly asked
22 her if she was going to find anything, and Ms. Rodriguez kept answer “no.” *Id.* at 65:21–
23 25. Ms. Rodriguez further testified that Agent Salcedo became frustrated, and lifted the
24 wires to Ms. Rodriguez's bra, causing the package to fall out. *Id.* at 66:1–4, 69:24–70:1.

25 26 **II. ANALYSIS**

27 Defendant contests the agent's legal right to conduct any more than an
28 immigration search. *See* Def.'s Mot. to Suppress Evid. (Doc. 29) at 4–6.

1 A. ***Referral to Secondary at Immigration Checkpoint***

2 **1. Checkpoints—In general**

3 “The Fourth Amendment prohibits ‘unreasonable searches and seizures’ by the
4 Government, and its protections extend to brief investigatory stops of persons or vehicles
5 that fall short of traditional arrest.” *United States v. Arvizu*, 534 U.S. 266, 273, 122 S.Ct.
6 744, 750, 151 L.Ed.2d 740 (2002) (citing *Terry v. Ohio*, 392 U.S. 1, 9, 88 S.Ct. 1868, 20
7 L.Ed.2d 889 (1968)); *United States v. Cortez*, 449 U.S. 411, 417, 101 S.Ct. 690, 66
8 L.Ed.2d 621 (1981)). “[C]heckpoint stops are ‘seizures’ within the meaning of the
9 Fourth Amendment.” *Martinez-Fuerte v. United States*, 428 U.S. 543, 556, 96 S.Ct.
10 3074, 3082, 49 L.Ed.2d 1116 (1976). The Supreme Court of the United States has
11 “upheld brief, suspicionless seizures of motorists at a fixed Border Patrol checkpoint
12 designed to intercept illegal aliens, . . . and at a sobriety checkpoint aimed at removing
13 drunk drivers from the road[.]” *City of Indianapolis v. Edmond*, 531 U.S. 32, 37, 121
14 S.Ct. 447, 452, 148 L.Ed.2d 333 (2000) (internal citations omitted). Such programs were
15 “designed to serve ‘special needs, beyond the normal need for law enforcement.’” *Id.*
16 (citations omitted). Moreover, “[i]t has been a national policy for many years to limit
17 immigration into the United States.” *Martinez-Fuerte*, 428 U.S. at 551, 96 S.Ct. at 3080.
18 There is a substantial public interest “in the practice of routine stops for inquiry at
19 permanent checkpoints.” *Id.* at 556, 96 S.Ct. at 3082.

20 “While the need to make routine checkpoint stops is great, the consequent
21 intrusion on Fourth Amendment interests is quite limited.” *Id.* at 558, 96 S.Ct. at 3083.
22 The severity of the interference with individual liberty “is ‘gauged by the objective
23 intrusion, measured by the duration of the seizure and the intensity of the investigation,
24 and by the subjective intrusion measured by the fear and surprise engendered in law-
25 abiding motorists by the nature of the stop.” *United States v. Fraire*, 575 F.3d 929, 934
26 (9th Cir. 2009) (citations omitted). “Such a stop is reasonable per se, so long as the scope
27 of the detention remains confined to a few brief questions, the possible production of a
28 document indicating the detainee’s lawful presence in the United States, and a ‘visual

1 inspection of the vehicle . . . limited to what can be seen without a search.” *United States*
2 *v. Taylor*, 934 F.2d 218, 220 (9th Cir. 1991) (quoting *Martinez-Fuerte*, 428 U.S. at 558,
3 562, 96 S.Ct. at 3083, 3085).

4 **2. Checkpoints—Constitutionality**

5 The Ninth Circuit Court of Appeals has delineated a “two-step analysis applicable
6 to Fourth Amendment checkpoint cases.” *United States v. Fraire*, 575 F.3d 929, 932 (9th
7 Cir. 2009). “First, the court must ‘determine whether the primary purpose of the
8 [checkpoint] was to advance ‘the general interest in crime control.’” *Id.* (citations
9 omitted) (alterations in original). Second, “[i]f the checkpoint is not per se invalid as a
10 crime control device, then the court must ‘judge [the checkpoint’s] reasonableness, hence
11 its constitutionality on the basis of the individual circumstances.’” *Id.* (citations omitted)
12 (alterations in original). “This requires consideration of ‘the gravity of the public
13 concerns served by the seizure, the degree to which the seizure advances the public
14 interest, and the severity of the interference with individual liberty.’” *Id.* (citations
15 omitted). The Ninth Circuit Court of Appeals has also observed that “a lawful
16 immigration checkpoint is not made unlawful by the addition of a secondary purpose of
17 drug interdiction.” *United States v. Wilson*, 650 Fed. Appx. 538 (9th Cir. 2016) (citing
18 *United States v. Soto-Camacho*, 58 F.3d 408, 411–12 (9th Cir. 1995)).

19 Here, the permanent immigration checkpoint on I-19 is not a general crimes
20 checkpoint, and therefore is not *per se* unreasonable. Furthermore, “[i]t has been a
21 national policy for many years to limit immigration into the United States.” *Martinez-*
22 *Fuerte*, 428 U.S. at 551, 96 S.Ct. at 3080. There is a substantial public interest “in the
23 practice of routine stops for inquiry at permanent checkpoints.” *Id.* at 556, 96 S.Ct. at
24 3082. Agent Salcedo’s initial questioning was regarding Defendant Rodriguez’s
25 immigration status. Hr’g Tr. 5/1/2018 (Doc. 42) at 17:13–21:16, 40:24–41:14, 41:19–
26 42:4, 54:6–22. While performing this immigration inspection, Agent Salcedo developed
27 a suspicion that Ms. Rodriguez might be involved in criminal activity. *See id.* at 16:17–
28 24:15, 40:24–41:14, 41:19–42:4, 51:14–52:10, 53:8–19, 54:6–22.

1 **C. *Search of Defendant***

2 It is well settled law “that one of the specifically established exceptions to the
3 requirements of both a warrant and probable cause is a search that is conducted pursuant
4 to consent.” *Schneckloth v. Bustamonte*, 412 U.S. 218, 219, 93 S.Ct. 2041, 2043-44, 36
5 L.Ed.2d 854 (1973). “[T]he Fourth and Fourteenth amendments require that a consent
6 not be coerced, by explicit or implicit means, by implied threat or covert force. For, no
7 matter how subtly the coercion was applied, the resulting ‘consent’ would be no more
8 than a pretext for the unjustified police intrusion against which the Fourth Amendment is
9 directed.” *Id.* at 228, 93 S.Ct. at 2048.

10 “Whether consent to search was voluntarily given is ‘to be determined from the
11 totality of all the circumstances.’” *United States v. Patayan Soriano*, 361 F.3d 494, 501
12 (9th Cir. 2004) (quoting *Schneckloth*, 412 U.S. at 222, 93 S.Ct. at 2041). “[F]ive factors
13 are to be considered in determining the voluntariness of consent to a search[;]” however,
14 these factors are guideposts, and should not be considered a checklist for the Court’s
15 review. *Patayan Soriano*, 361 F.3d at 502. The five factors are as follows: “(1) whether
16 defendant was in custody; (2) whether the arresting officers had their guns drawn; (3)
17 whether Miranda warnings were given; (4) whether the defendant was notified that [he]
18 had a right not to consent; and (5) whether the defendant had been told a search warrant
19 could be obtained.” *Patayan Soriano*, 361 F.3d at 502 (quoting *United States v. Jones*,
20 286 F.3d 1146, 1152 (9th Cir. 2002)). “The fact that some of these factors are not
21 established does not automatically mean that consent was not voluntary.” *United States*
22 *v. Castillo*, 866 F.2d 1071, 1082 (9th Cir. 1988). The Government bears “the burden of
23 proving that the consent was, in fact, freely and voluntarily given.” *Bumper v. State of*
24 *North Carolina*, 391 U.S. 543, 548, 88 S.Ct. 1788, 1792, 20 L.Ed.2d 797 (1968).

25 The Court finds that based upon the totality of the circumstances, Defendant
26 Rodriguez consented to the search of her person. The Court finds Agent Salcedo’s
27 testimony regarding the events leading up to and including the search more credible. The
28 Court further finds Agent Salcedo’s testimony sought and obtained Defendant

1 Rodriguez's consent prior to the search credible. The Court also finds that there is no
2 evidence that Defendant Rodriguez was threatened, coerced or that her will was
3 overborne. Moreover, the Court finds that Defendant Rodriguez did not revoke her
4 consent at any time during her interactions with Agent Salcedo. As such, the Court finds
5 that Defendant Rodriguez freely and voluntarily gave her consent for law enforcement to
6 perform a pat-down search of her person.

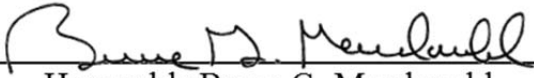
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8 **IV. RECOMMENDATION**

9 For the foregoing reasons, the Magistrate Judge recommends that the District
10 Judge, after his independent review, DENY Defendant Iris Rodriguez's Motion to
11 Suppress Evidence (Doc. 29).

12 Pursuant to 28 U.S.C. §636(b) and Rule 59(b)(2) of the Federal Rules of Criminal
13 Procedure, any party may serve and file written objections within fourteen (14) days after
14 being served with a copy of this Report and Recommendation. No reply shall be filed
15 unless leave is granted from the District Court. If objections are filed, the parties should
16 use the following case number: **CR-17-1301-TUC-JAS**.

17 Failure to file timely objections to any factual or legal determination of the
18 Magistrate Judge in accordance with Fed. R. Crim. P. 59 may result in waiver of the right
19 of review.

20 Dated this 2nd day of July, 2018.

21
22 
23 Honorable Bruce G. Macdonald
24 United States Magistrate Judge
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